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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,826	10/24/2003	Kenneth E. Kadziauskas	3112	9260
26822	7590	12/28/2004	EXAMINER	
WALTER A. HACKLER 2372 S.E. BRISTOL, SUITE B NEWPORT BEACH, CA 92660-0755			NGUYEN, CAMTU TRAN	
			ART UNIT	PAPER NUMBER

3743

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,826

Applicant(s)

KADZIAUSKAS ET AL.

Examiner

Camtu T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2, 5-7 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I in the reply filed on December 6, 2004 is acknowledged.

Response to Preliminary Amendment

This Office Action is in response to applicant's preliminary amendment filed on December 6, 2004. Claims 1, 3, 4, and 8-22 have been cancelled. Claim 5 has been amended. Claim 23 is newly added claim, rendering claims 2, 5-7, and 23 pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Moorhead (U.S. Patent No. 5,865,764). Moorhead discloses in Figure 1 an apparatus for determining and providing for automatic control of fluid pressure within a body cavity during irrigation procedures used in surgery involves operations within the vitreous cavity of an eye. The apparatus includes a source of irrigation fluid (10) for replacement of the fluid being removed from the body cavity and a source of vacuum for aspiration (38). The fluid reservoir (10)

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containing an irrigation fluid (12) and is in communication with pump inlet line (14), a line through which provides fluid to the pump (16) which provides pressurization to the infusion line (18), and the infusion line (18) comprises an outlet (28) at which extends into the body cavity (24) to allow irrigation fluid (12) to flow into the interior of the body cavity. The infusion line (18) further includes two pressure transducers (48) for measuring the pressure of the irrigation fluid (12) inside the infusion line (18). Moorhead discloses data from the pressure transducers (48) are analyzed by the computer (56), allowing real-time computation of the internal fluid pressure. This computed result is compared to a desired set-point, allowing the computer to further determine whether the controllable pump's operation should be maintained or altered. Therefore, the apparatus, as disclosed, is capable of performing the method for controlling fluid flow to and from an eye during ophthalmic surgery including steps to infuse the irrigation fluid to an eye, to determine initial irrigation fluid pressure, to adjust irrigation fluid flow based on the determined initial irrigation fluid pressure, to continuously determine irrigation fluid pressure after the initial determination, and to continuously adjust irrigation fluid flow based on the continuously determination of irrigation fluid pressure. With regards to claims 6 and 7, the device, would inherently capable of setting a maximum aspiration vacuum pressure as a function of determined irrigation fluid and wherein the function is linear, as recited.

Allowable Subject Matter

Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

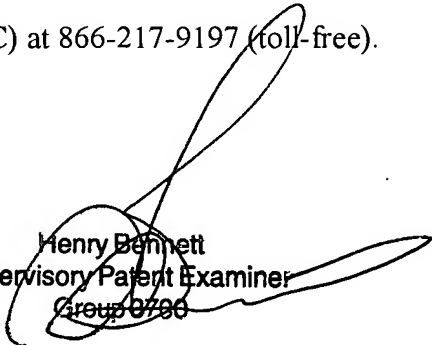
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 703-305-0537. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Camtu Nguyen
December 22, 2004


Henry Bennett
Supervisory Patent Examiner
Group 0790